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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ROBERT T. and ELIZABETH J. KELLY,  
9 husband and wife and the marital community  
10 composed thereof,

11 Plaintiffs,

12 vs.

13 CHASE HOME FINANCE LLC (a subsidiary  
14 of Chase Home Finance Inc.), a Delaware  
15 corporation; and MORTGAGE  
16 ELECTRONIC REGISTRATION SYSTEMS,  
INC., a Delaware Corporation,

17 Defendants.

NO. 3:13-CV-05029-RBL

DEFENDANTS' STATUS REPORT

18 Defendants JPMorgan Chase Bank, N.A., as successor by merger to Chase Home  
19 Finance, LLC ("Chase"), and Mortgage Electronic Registration Systems, Inc. ("MERS"),  
20 submit this Status Report under Federal Rule of Civil Procedures 26(f). Although this  
21 Court's prior Order provides that "Plaintiffs' counsel...will be responsible for starting the  
22 communications needed to comply with" the Order Regarding Initial Disclosures, Joint  
23 Status Report, and Early Settlement, *see* Dkt. 6, Plaintiffs' counsel did not do so. Rather,

24 DEFENDANTS' STATUS REPORT - 1  
25 3:13-cv-05029-RBL

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1 Defense counsel sent Plaintiffs' counsel e-mails on April 16, 2013, and April 17, 2013, and  
2 an additional voicemail on April 22, 2013, requesting either a Rule 26(f) conference or an  
3 agreement to request an extension from the Court. Plaintiffs' counsel did not respond to  
4 those e-mails or voicemail at all.

5 Defense counsel did receive an email from Plaintiffs' counsel on March 20, 2013,  
6 agreeing to dismiss MERS from this case because it is not named on the Deed of Trust and  
7 has no involvement with the loan or property involved whatsoever. To date, however,  
8 Plaintiffs' counsel has failed to follow through with the promised dismissal.

9 It should be pointed out that Plaintiffs' counsel has had at least two separate cases  
10 recently dismissed for failure to participate in the CR 26(f) conference process. *See* Case  
11 Nos. 2:12-cv-01629-RSL, and 2:12-cv-01791-RAJ. Because Plaintiffs' counsel refused to  
12 respond and failed to participate in a Rule 26(f) conference, Defendant now files this  
13 Status Report.  
14

15 **1. Nature and Complexity of the Case.**

16 Plaintiffs allege multiple claims against defendants relating to purported improper  
17 demand for payments on a promissory note and foreclosure on a vacation rental property  
18 pursuant to a related deed of trust. Defendants deny all claims by Plaintiffs. Defendants  
19 also note that they have not yet been served, and that MERS should not be a party to this  
20 lawsuit at all, as Plaintiffs' counsel has previously recognized.

21 **2. Proposed Deadline to Join Additional Parties.**

22 Defendants proposes June 30, 2013 as the deadline to join additional parties.  
23

1 **3. Magistrate.**

2 No.

3 **4. Discovery Plan**

4 a) *Initial Disclosures*: The Fed. R. Civ. P. 26(f) conference did not take place  
5 because Plaintiffs' counsel did not respond to requests for a conference. Given this failure  
6 and because of the fact that Defendants have not yet been served, and that MERS should  
7 not be a party at all, Defendants did not provide initial disclosures. Plaintiffs also did not  
8 provide initial disclosures. Defendant believes discovery should be stayed until the Court  
9 decides whether to allow this action to continue given Plaintiffs' failure to participate in a  
10 CR 26(f) conference, failure to serve Defendants, and improperly naming MERS as a  
11 party.

12 b) *Subjects, timing, and potential phasing of discovery*: If discovery occurs in this  
13 matter, Defendants submit that discovery should be conducted pursuant to the Federal  
14 Rules of Civil Procedure. Discovery should relate to Plaintiffs' loan and foreclosure files  
15 for the property at issue, correspondence between Plaintiffs and Defendant(s), and  
16 discovery into facts alleged in the Complaint that only Plaintiffs would have knowledge of.  
17 It is not anticipated that phasing will be necessary.

18 c) *Electronically Stored Information*: Issues relating to electronic discovery are not  
19 anticipated at this time.

20 d) *Privilege Issues*: No privilege issues are anticipated at this time.

21 e) *Proposed Limitations on Discovery*: Discovery should be limited to Plaintiffs'  
22 loan and foreclosure files for the property at issue, correspondence between Plaintiffs and  
23

1 Defendant(s), and discovery into facts alleged in the Complaint that only Plaintiffs would  
2 have knowledge of.

3 f) *Discovery Related Orders*: At this time, Defendants do not believe any discovery  
4 related orders are necessary other than an order to show cause as to why Plaintiffs have  
5 failed to even attempt to participate in a CR 26(f) conference.

6 **5. Local Civil Rule 26(f)(1).**

7 (A) prompt case resolution; - There has been significant correspondence between  
8 the parties in an attempt to resolve this matter, but that correspondence has been cut off  
9 recently due to Plaintiffs' counsel's failure to respond to multiple emails and voicemail.

10 (B) alternative dispute resolution; - Alternative dispute resolution might be useful,  
11 but it is difficult to determine based upon Plaintiffs' failure to respond to correspondence  
12 recently.

13 (C) related cases; - None currently known to Defendants to be pending.

14 (D) discovery management; - Unknown due to Plaintiffs' failure to participate.

15 (E) anticipated discovery sought; - Plaintiffs' loan and foreclosure files for the  
16 property at issue, correspondence between Plaintiffs and Defendant(s), and discovery into  
17 facts alleged in the Complaint that only Plaintiffs would have knowledge of.

18 (F) phasing motions; - Early summary judgment or motion to dismiss anticipated if  
19 case moves forward despite Plaintiffs' lack of participation, failure to serve Defendants,  
20 and improperly naming MERS as a party.

21 (G) preservation of discoverable information; - no known issues.

22 (H) privilege issues; - no known issues.

1 (I) Model Protocol for Discovery of ESI; - certain discoverable information is  
2 stored electronically, but any agreement with Plaintiffs is unknown due to Plaintiffs'  
3 failure to participate.

4 (J) alternatives to Model Protocol. – not known at this time.

5 **6. Completion of Discovery.**

6 Defendant believes that discovery can be completed 120 days before the trial date.  
7 Thus, assuming a trial date of April 28, 2014, discovery can be completed by November  
8 11, 2013.

9 **7. Bifurcation.**

10 Defendants do not believe that bifurcation is appropriate for this matter.

11 **8. Pretrial Statements and Order.**

12 Defendants do not believe that pretrial statements and orders called for by Local  
13 Rule 16 should be dispensed with in whole or in part.

14 **9. Local Civil Rules 39.2 and 39.1.**

15 Unknown due to Plaintiffs failure to participate.

16 **10. Other Suggestions.**

17 Other than dismissal, Defendants do not presently have any other suggestions for  
18 simplifying this matter.

19 **11. Trial Date.**

20 Defendants do not believe that this case should go to trial, but if it does, April 28,  
21 2014, is suggested.

22 **12. Jury.**

23 Plaintiffs have not demanded a jury trial.

**13. Length of Trial.**

Defendants anticipate this would be a three (3) day trial.

**14. Contact Information of Counsel.**

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**15. Trial Date Complications**

At this point, Defense counsel has trial dates in late March, early April 2014, and early May but otherwise does not have any currently scheduled complications near the proposed trial date.

**16. Service**

Defendants have not been served.

**17. Scheduling Conference.**

Defendants do not anticipate the need for a scheduling conference.

**18. Corporate Disclosure.**

Defendants filed Corporate Disclosures on January 18, 2013. [Dkt. Nos. 8 & 9].

1       **DATED** this 25<sup>th</sup> day of April, 2013.

2  
3                               /s/ Adam G. Hughes

4                               Adam G. Hughes, WSBA #34438

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10                              Attorneys for Defendants JPMorgan Chase Bank,

11                              National Association and Mortgage Electronic

12                              Registration Systems, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to the following CM/ECF participants:

Robert J. Penfield  
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☐ By First Class Mail  
☐ By ABC Legal Messenger  
☐ By Email  
☐ By Facsimile  
☒ By CM/ECF Electronic Delivery

DATED this 25<sup>th</sup> day of April, 2013, at Seattle, Washington.

/s/Kay Spading  
Kay Spading, Legal Assistant  
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